

AMENDED IN ASSEMBLY MARCH 23, 2010

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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1596

Introduced by Assembly Member Hayashi

January 4, 2010

An act to add Section 527.11 to the Code of Civil Procedure, and to amend Section 136.2 of, and to add Section 269.1 to, the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1596, as amended, Hayashi. Protective orders: emergency protective orders: enforcement ~~priority: sexual assault.~~ *priority.*

~~(1) Existing~~

Existing law authorizes a court to issue various types of restraining and protective orders to enjoin a person from engaging in specified acts against another person.

This bill would provide that, in the event multiple and conflicting restraining or protective orders are issued against the same person for the protection of the same individual or individuals named in the orders, the orders shall be enforced in a manner that provides the greatest protection to the individuals protected under the orders and provides the most restrictions to the restrained party.

~~(2) Existing law authorizes a judicial officer to issue an ex parte emergency protective order, as specified, to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or stalking.~~

~~This bill would authorize a judicial officer to issue an ex parte emergency protective order where a peace officer, as defined, asserts reasonable grounds to believe that a person is likely to become a victim of a sexual assault. The bill would specify the procedures for issuance of an ex parte emergency protective order on this basis that would be similar to the procedures used for issuance of those orders under the law relating to prevention of domestic violence and stalking.~~

~~(3) Existing law provides that an emergency protective order issued under specified provisions and meeting specified requirements relating to domestic violence, child abuse, child abduction, and stalking shall have precedence in enforcement over the provisions of any other restraining or protective order, if the emergency protective order is the more restrictive order in relation to the restrained party.~~

~~This bill would include emergency protective orders relating to sexual assault as emergency protective orders that would also have precedence in enforcement over the provisions of any other restraining or protective order if the emergency protective order is the more restrictive order in relation to the restrained party. The bill would also require the Judicial Council to adopt forms, instructions, and rules for carrying out its provisions.~~

~~The bill would make intentional disobedience of any emergency protective order authorized by the bill punishable as a contempt of court, and would provide that, if the conduct underlying the contempt is also pled and proved to be one of certain sexual crimes, it is punishable under the provisions defining the sexual offense. By creating a new crime, this bill would impose a state-mandated local program.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 527.11 is added to the Code of Civil
- 2 Procedure, to read:
- 3 527.11. (a) Notwithstanding any other provision of law, in the
- 4 event that two or more restraining or protective orders, including

1 emergency protective orders, are issued under this code, the Family
2 Code, the Penal Code, or the Welfare and Institutions Code that
3 satisfy all of the requirements set forth in subdivision (b), the orders
4 shall be enforced in a manner that provides the greatest protection
5 to the individuals protected under the orders and provides the most
6 restrictions to the restrained party.

7 (b) (1) At least one of the protected individuals is identified in
8 all of the orders.

9 (2) The restrained party is the same in all of the orders.

10 (3) The orders are in conflict.

11 SEC. 2. Section 136.2 of the Penal Code is amended to read:

12 136.2. (a) Except as provided in subdivision (c), upon a good
13 cause belief that harm to, or intimidation or dissuasion of, a victim
14 or witness has occurred or is reasonably likely to occur, any court
15 with jurisdiction over a criminal matter may issue orders including,
16 but not limited to, the following:

17 (1) Any order issued pursuant to Section 6320 of the Family
18 Code.

19 (2) An order that a defendant shall not violate any provision of
20 Section 136.1.

21 (3) An order that a person before the court other than a
22 defendant, including, but not limited to, a subpoenaed witness or
23 other person entering the courtroom of the court, shall not violate
24 any provisions of Section 136.1.

25 (4) An order that any person described in this section shall have
26 no communication whatsoever with any specified witness or any
27 victim, except through an attorney under any reasonable restrictions
28 that the court may impose.

29 (5) An order calling for a hearing to determine if an order as
30 described in paragraphs (1) to (4), inclusive, should be issued.

31 (6) An order that a particular law enforcement agency within
32 the jurisdiction of the court provide protection for a victim or a
33 witness, or both, or for immediate family members of a victim or
34 a witness who reside in the same household as the victim or witness
35 or within reasonable proximity of the victim's or witness'
36 household, as determined by the court. The order shall not be made
37 without the consent of the law enforcement agency except for
38 limited and specified periods of time and upon an express finding
39 by the court of a clear and present danger of harm to the victim or
40 witness or immediate family members of the victim or witness.

For purposes of this paragraph, “immediate family members” include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any

1 substantive offense described in Section 136.1, or for a contempt
2 of the court making the order. A finding of contempt shall not be
3 a bar to prosecution for a violation of Section 136.1. However,
4 any person so held in contempt shall be entitled to credit for any
5 punishment imposed therein against any sentence imposed upon
6 conviction of an offense described in Section 136.1. Any conviction
7 or acquittal for any substantive offense under Section 136.1 shall
8 be a bar to a subsequent punishment for contempt arising out of
9 the same act.

10 (c) (1) Notwithstanding any other provision of law, in the event
11 that two or more restraining or protective orders, including
12 emergency protective orders, are issued under this code, the Code
13 of Civil Procedure, the Family Code, or the Welfare and Institutions
14 Code that satisfy all of the requirements set forth in subdivision
15 (b), the orders shall be enforced in a manner that provides the
16 greatest protection to the individuals protected under the orders
17 and provides the most restrictions to the restrained party.

18 (2) (A) At least one of the protected individuals is identified
19 in all of the orders.

20 (B) The restrained party is the same in all of the orders.

21 (C) The orders are in conflict.

22 (d) (1) A person subject to a protective order issued under this
23 section shall not own, possess, purchase, receive, or attempt to
24 purchase or receive a firearm while the protective order is in effect.

25 (2) The court shall order a person subject to a protective order
26 issued under this section to relinquish any firearms he or she owns
27 or possesses pursuant to Section 527.9 of the Code of Civil
28 Procedure.

29 (3) Every person who owns, possesses, purchases or receives,
30 or attempts to purchase or receive a firearm while the protective
31 order is in effect is punishable pursuant to subdivision (g) of
32 Section 12021 of the Penal Code.

33 (e) (1) In all cases where the defendant is charged with a crime
34 of domestic violence, as defined in Section 13700, the court shall
35 consider issuing the above-described orders on its own motion.
36 All interested parties shall receive a copy of those orders. In order
37 to facilitate this, the court's records of all criminal cases involving
38 domestic violence shall be marked to clearly alert the court to this
39 issue.

(2) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) In any case in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

~~SEC. 3. Section 269.1 is added to the Penal Code, to read:~~

~~269.1. (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace~~

1 officer, as defined in Section 830.1, 830.2, or 830.32, asserts
2 reasonable grounds to believe that a person is in immediate and
3 present danger of being a victim of an act that is punishable as a
4 crime under this chapter based upon the person's allegation,
5 supported by a recitation of applicable facts, that he or she is in
6 reasonable fear that an act that is punishable as a crime under this
7 chapter will be committed against him or her.

8 (b) A peace officer who requests an emergency protective order
9 shall reduce the order to writing and sign it.

10 (c) An emergency protective order shall include all of the
11 following:

12 (1) A statement of the grounds asserted for the order.

13 (2) The date and time the order expires.

14 (3) The address of the superior court for the district or county
15 in which the protected party resides.

16 (4) The following statements, which shall be printed in English
17 and Spanish:

18
19 (A) "To the protected person: This order will last until the date
20 and time noted above. If you wish to seek continuing protection,
21 you will have to apply for an order from the court at the address
22 noted above. You may seek the advice of an attorney as to any
23 matter connected with your application for any future court orders.
24 The attorney should be consulted promptly so that the attorney
25 may assist you in making your application."

26
27 (B) "To the restrained person: This order will last until the date
28 and time noted above. The protected party may, however, obtain
29 a more permanent restraining order from the court. You may seek
30 the advice of an attorney as to any matter connected with the
31 application. The attorney should be consulted promptly so that the
32 attorney may assist you in responding to the application. You may
33 not own, possess, purchase or receive, or attempt to purchase or
34 receive a firearm while this order is in effect."

35
36 (d) An emergency protective order may be issued under this
37 section only if the judicial officer finds both of the following:

38 (1) That reasonable grounds have been asserted to believe that
39 an immediate and present danger of the protected person becoming

1 a victim of an act that is punishable as a crime under this chapter
2 exists:

3 (2) ~~That an emergency protective order is necessary to prevent~~
4 ~~the occurrence or reoccurrence of an act that is punishable as a~~
5 ~~crime under this chapter by the restrained person.~~

6 (e) ~~An emergency protective order may include either of the~~
7 ~~following specific orders as appropriate:~~

8 (1) ~~A harassment protective order as described in Section 527.6~~
9 ~~of the Code of Civil Procedure.~~

10 (2) ~~A workplace violence protective order as described in~~
11 ~~Section 527.8 of the Code of Civil Procedure.~~

12 (f) ~~An emergency protective order shall be issued without~~
13 ~~prejudice to any person.~~

14 (g) ~~An emergency protective order expires at the earlier of the~~
15 ~~following times:~~

16 (1) ~~The close of judicial business on the fifth court day following~~
17 ~~the day of its issuance.~~

18 (2) ~~The seventh calendar day following the day of its issuance.~~

19 (h) ~~A peace officer who requests an emergency protective order~~
20 ~~shall do all of the following:~~

21 (1) ~~Serve the order on the restrained person, if the restrained~~
22 ~~person can reasonably be located.~~

23 (2) ~~Give a copy of the order to the protected person, or, if the~~
24 ~~protected person is a minor child, to a parent or guardian of the~~
25 ~~protected child if the parent or guardian can reasonably be located,~~
26 ~~or to a person having temporary custody of the child.~~

27 (3) ~~File a copy of the order with the court as soon as practicable~~
28 ~~after issuance.~~

29 (i) ~~A peace officer shall use every reasonable means to enforce~~
30 ~~an emergency protective order.~~

31 (j) ~~A peace officer who acts in good faith to enforce an~~
32 ~~emergency protective order is not civilly or criminally liable.~~

33 (k) ~~A peace officer who requests an emergency protective order~~
34 ~~under this section shall carry copies of the order while on duty.~~

35 (l) ~~A peace officer described in subdivision (a) or (b) of Section~~
36 ~~830.32 who requests an emergency protective order pursuant to~~
37 ~~this section shall also notify the sheriff or police chief of the city~~
38 ~~in whose jurisdiction the peace officer's college or school is located~~
39 ~~after issuance of the order.~~

1 ~~(m) “Judicial officer,” as used in this section, means a judge,~~
2 ~~commissioner, or referee.~~

3 ~~(n) A person subject to an emergency protective order under~~
4 ~~this section shall not own, possess, purchase, or receive a firearm~~
5 ~~while the order is in effect.~~

6 ~~(o) Nothing in this section shall be construed to permit a court~~
7 ~~to issue an emergency protective order prohibiting speech or other~~
8 ~~activities that are constitutionally protected or protected by the~~
9 ~~laws of this state or by the United States or activities occurring~~
10 ~~during a labor dispute, as defined by Section 527.3 of the Code of~~
11 ~~Civil Procedure, including, but not limited to, picketing and~~
12 ~~handbilling.~~

13 ~~(p) The Judicial Council shall develop forms, instructions, and~~
14 ~~rules for the scheduling of hearings and other procedures~~
15 ~~established pursuant to this section.~~

16 ~~(q) Any intentional disobedience of any emergency protective~~
17 ~~order granted under this section is punishable pursuant to Section~~
18 ~~166. Nothing in this subdivision shall be construed to prevent~~
19 ~~punishment under this chapter, in lieu of punishment under this~~
20 ~~section, if an act that is punishable as a crime under this chapter~~
21 ~~is also pled and proven.~~

22 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
23 ~~Section 6 of Article XIII B of the California Constitution because~~
24 ~~the only costs that may be incurred by a local agency or school~~
25 ~~district will be incurred because this act creates a new crime or~~
26 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
27 ~~for a crime or infraction, within the meaning of Section 17556 of~~
28 ~~the Government Code, or changes the definition of a crime within~~
29 ~~the meaning of Section 6 of Article XIII B of the California~~
30 ~~Constitution.~~